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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/717,573	11/21/2000	Thomas P. Muller	99-478	2111

719 7590 10/29/2003

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100 N.E. ADAMS STREET  
PATENT DEPT.  
PEORIA, IL 616296490

EXAMINER

GARLAND, STEVEN R

ART UNIT	PAPER NUMBER
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2125

DATE MAILED: 10/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/717,573

Applicant(s)

MULLER, THOMAS P.

Examiner

Steven R Garland

Art Unit

2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The drawings are objected to because they fail to show element 130 as mentioned on page 8, line 17 in the specification and also from the paragraph bridging pages 17 and 18, the arrow at the bottom of block 414, in fig. 4, should be deleted since block 414 is not a decision block. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Various terms in the claims lack a proper antecedent basis and examples are given below.

Claim 1, line 6, " the work" lacks a proper antecedent basis.

Claim 1, line 9, " the productivity" lacks a proper antecedent basis.

Claim 3, line 5, " the operation" and " the payload " both lack a proper antecedent basis.

Claim 3, line 6, " the amount of fuel " lacks a proper antecedent basis.

Claim 5, line 9, " the operator" lacks a proper antecedent basis.

Claim 5, line 13, " the change" lacks a proper antecedent basis.

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In claim 6, in line 6, " the operation"; in line 9 " the payload "; in line 12, " the amount of fuel " ; in line 27, " the productivity "; and in line 48, " the change " all lack a proper antecedent basis.

Claim 7, line 4, " the productivity" and " the machine" both lack a proper antecedent basis.

In claim 14, lines 6-9, it is unclear what the incentive is or is not.

The remaining claims have problems similar to the various examples given above.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hagenbuch 5,754,965.

Hagenbuch teaches a work machine with a frame, ground engaging devices, operator compartment, implement with a linkage, engine, measuring productivity, sensors to sense operation of the machine, payload, fuel consumption, data storage device, and processor. See the abstract; figures; col. 1, line 48 to col. 3, line 47; col. 5, line 25 to col. 7, line 14; col. 7, line 55 to col. 10, line 29; col. 22, line 50 to col. 24, line 14.

Hagenbuch however does not specifically state that productivity is a function of the fuel consumed or determine the change in productivity and store the change. The

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productivity is obviously a function of the fuel consumed, since if the machine is not running it is not productivity. Hagenbuch does teach monitoring for changes and trends. Hagenbuch also teaches determining the rate of production and comparing it to a goal to determine if the production is normal or not.

It would have been obvious to one of ordinary skill in the art to modify Hagenbuch to compute the change in productivity and store the change in productivity so that the operator could monitor his progress in achieving the goal production. This would give the operator or supervisor additional information on ways to improve performance and monitor trends. This would also provide the supervisor with information useful in scheduling additional vehicles and loading devices to match the desired production goal.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor et al. 2002/0156666.

Taylor et al. teaches performance based contracting for motor productivity and guaranteeing motor up time ( minimum productivity ). See the abstract; figures; numbered paragraphs 0015,0016,0021,0034,0035, 0060,0062,0065, and claim 23. Note paragraph 0065.

Taylor however does not specifically state that the productivity of the machine ( motor ) is determined.

It would have been obvious to one of ordinary skill in the art to determine the productivity of the machine so that the performance based contract and its terms would accurately reflect the productivity of the current machine and any replacement machine.

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7. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor et al. 2002/0156666 as applied to claim 7 above, and further in view of Hagenbuch 5,754,965.

Taylor et al. teaches performance based contracting for motor productivity and guaranteeing motor up time. Taylor also teaches repair and maintenance. See the abstract; figures; numbered paragraphs 0015,0016,0021,0034,0035, 0060,0062,0065, and claim 23. Note paragraph 0065.

Taylor however does not specifically state that the productivity of the machine ( motor ) is determined.

It would have been obvious to one of ordinary skill in the art to determine the productivity of the machine so that the performance based contract and its terms would accurately reflect the productivity of the current machine and any replacement machine.

Taylor however does not teach determining operator skill level and determining if productivity is deteriorating.

Hagenbuch teaches measuring productivity and determining if productivity is deteriorating. See the abstract; figures; col. 1, line 48 to col. 3, line 47; col. 5, line 25 to col. 7, line 14; col. 7, line 55 to col. 10, line 29; col. 22, line 50 to col. 24, line 14.

It would have been obvious to one of ordinary skill in the art to modify Taylor in view of Hagenbuch and determine the operator skill level and determine if the productivity is deteriorating. This would allow a determination if the equipment under contract is at fault or whether the operator is at fault. Further this would allow needed repairs to be performed so as keep the contract in force.

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8. Claims 1,3,6,10,17,18,27,29,30,33,35,39, and 42 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

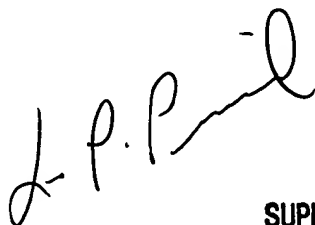
9. Claims 2,4,5,11-16,19, 25,26, 28,31,32,34,36-38,40,41, and 43-45 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Henderson et al. 5,815,826 and Imanishi et al. 6,349,252 are of interest in determining productivity.


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven R Garland whose telephone number is 703-305-9759. The examiner can normally be reached on Monday-Thursday from 6:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard, can be reached on (703) 308-0538. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-3900.



**LEO PICARD**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2100**



**Steven R Garland**  
**Examiner**  
**Art Unit 2125**